UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUIS TORIBIO, As Administrator of the Estate of ROSANNA GUERRERO, and LUIS TORIBIO, Individually,

Plaintiffs,

-against-

UNITED STATES OF AMERICA, MICHAEL J. NAPOLI, M.D. and URBAN HEALTH PLAN, INC.,

Defendants.

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17 Civ 3001

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, **LUIS TORIBIO, As Administrator of the Estate of ROSANNA GUERRERO, and LUIS TORIBIO, Individually,** by their attorneys, **JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.**, as and for their Complaint against the Defendants allege, upon information and belief, as follows:

JURISDICTION

1. That at all times herein after mentioned, Decedent, ROSANNA GUERRERO, resided at 709 E. 183rd Street, State of New York, County of Bronx.

2. That at all times herein after mentioned, Plaintiff, LUIS TORIBIO, resided at 709 E. 183rd Street, State of New York, County of Bronx.

3. That ROSANNA GUERRERO, died on the 6th day of May, 2015.

4. That the Plaintiff, LUIS TORIBIO is the administrator of the Estate of ROSANNA GUERRERO, deceased.

5. The Defendant, United States of America, is a public entity.

6. That at all times hereinafter mentioned, MICHAEL J. NAPOLI, M.D. (hereinafter referred to as "NAPOLI"), was and is a physician duly licensed to practice medicine in the State of New York and is a citizen of the State of New York, practicing medicine in Bronx County.

7. That at all times hereinafter mentioned, Defendant, NAPOLI, held himself out to the public as a specialist in the area of obstetrics and gynecology.

8. That at all times hereinafter mentioned, Defendant, URBAN HEALTH PLAN, INC. (hereinafter referred to as "URBAN"), was a federally qualified community health center licensed as a diagnostic and treatment center under Article 28 of the New York Public Health Law.

9. That at all times hereinafter mentioned, Defendant, URBAN, by its agents, servants and employees, controlled, managed and operated the facility located at 1065 Southern Blvd, Bronx, NY 10459, in the State of New York, County of Bronx, for the care and treatment of persons afflicted with illness and disease.

10. That at all times hereinafter mentioned, Defendant, UNITED STATES OF AMERICA, by its agents, servants and employees, controlled, managed and operated the community health center located at 1065 Southern Blvd, Bronx, NY 10459, in the State of New York, County of Bronx, for the care and treatment of persons afflicted with illness and disease.

11. That at all times herein mentioned, Defendant, NAPOLI, was an agent, servant and/or employee of Defendant, URBAN.

12. That at all times herein mentioned, Defendant, NAPOLI, was an agent, servant and/or employee of Defendant, UNITED STATES OF AMERICA.

13. By passage of the Federal Tort Claims Act, 28 U.S.C. Section 1346(b) and 28 U.S.C. Section 2671-2680, the Defendant, United States of America, consented to be sued in

actions sounding in tort and Section 1346(b) of said Act specifically grants the Federal District Courts exclusive jurisdiction over torts allegedly committed by the Defendant, United States of America, its agencies, agents, servants and/or employees.

14. The jurisdiction of this Court is predicated upon 28 U.S.C. Section 1346(b) and upon 28 U.S.C. Section 1331 in that it arises under the laws of the United States of America.

15. The amount in controversy exceeds the sum or value of $75,000.00 exclusive of interest and costs.

16. Plaintiff, LUIS TORIBIO, presented his claim to the appropriate federal agency, U.S. Department of Health and Human Services, Office of the General Counsel, 330 C. Street, S.W., Switzer Building, Suite 2600, Washington, D.C. 20201.

17. By letter dated October 25, 2016, the U.S. Department of Veterans Affairs denied the claim.

18. Pursuant to 28 U.S.C. 2401(b), the Plaintiff has six (6) months from receipt of denial of the administrative claim to file suit in the United States District Court, which would be April 26, 2017.

AS AND FOR A FIRST CAUSE OF ACTION

19. That the Decedent, ROSANNA GUERRERO, came under the care of the Defendants, on or about September 18, 2013.

20. That the Decedent, ROSANNA GUERRERO, continued to receive care from each of these Defendants until approximately February, 2015.

21. That at all times herein mentioned, the Defendants had a duty to use reasonable and proper care in their efforts to care for, treat and medicate said Decedent.

22. That the Defendants, in rendering services to the Plaintiff, owed her the duty to use the degree of care, skill and diligence used by facilities generally in the community, and specifically facilities rendering obstetric and gynecological care.

23. That the Defendant, Napoli, owed the Plaintiff the duty to use the degree of care, skill and diligence used by obstetricians and gynecologists generally in the community.

24. That the Defendants, jointly and severally, acting by themselves and through their agents, failed to use due, reasonable and proper care in treating the Plaintiff and deviated from accepted standards of medical care prevailing in the area of obstetrics and gynecology, and the Defendants failed to exercise the knowledge, skill and diligence, which as physicians they should have possessed and exercised on behalf of the Decedent, and were otherwise careless and negligent.

25. That as a result of the foregoing, the Decedent, ROSANNA GUERRERO, has sustained serious, severe and irreversible personal injuries, and pain and suffering.

26. That solely as a result of the aforesaid injuries due to the improper care and treatment on the part of the Defendants, the Decedent, ROSANNA GUERRERO, has been subjected to repeated medical therapy, examinations, tests, medications, hospitalizations, and other care and has been caused to lose her life.

27. That the Decedent, ROSANNA GUERRERO, has sustained the injuries and damages set forth solely by reason of the carelessness, negligence and lack of skill of the Defendants, without any negligence or carelessness on the part of Decedent, ROSANNA GUERRERO.

28. That due to the Defendants' negligent conduct, the Decedent, ROSANNA GUERRERO, has been damaged in the sum of TWENTY MILLION ($20,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION

29. Plaintiffs, **LUIS TORIBIO, As Administrator of the Estate of ROSANNA GUERRERO, and LUIS TORIBIO, Individually,** repeat and reallege each and every allegation contained in Paragraphs numbered **"1"** through **"28",** inclusive, of this Verified Complaint, with the same force and effect as if set forth herein at length.

30. The Defendants were under a duty and obligation to advise and inform the Decedent, **ROSANNA GUERRERO,** of the inherent dangers, risks, and consequences of the medical treatment and procedures recommended by the Defendants, and that the Defendants failed, neglected, and/or refused to advise, inform, notify the Decedent, **ROSANNA GUERRERO,** of the apparent risk and possible complications and dangers which might result in the aforesaid procedures and/or treatment recommended.

31. Defendants failed, neglected, and/or refused to inform, advise, notify, and counsel the Decedent, **ROSANNA GUERRERO,** of the possible inherent dangers and risks of said procedures and treatment recommended and performed, and failed to advise and inform the Decedent, **ROSANNA GUERRERO,** of any other method of treatment which might have been used to alleviate the condition from which the Decedent, **ROSANNA GUERRERO,** was suffering.

32. Said failure to advise, inform, notify, and counsel the Decedent, **ROSANNA GUERRERO,** did not afford her adequate knowledge and information so as to determine whether or not she should submit to the aforesaid treatment and, therefore, the Decedent,

ROSANNA GUERRERO, did not give her informed consent, based upon adequate knowledge of the risks and dangers of the procedures; rather, consented based upon information which was inadequate and insufficient upon which to base a decision to submit to the said procedure.

33. By reason of the aforesaid, the treatment given herein was not based upon adequate and sufficient knowledge or informed consent.

34. Decedent, **ROSANNA GUERRERO,** has sustained the injuries and damages, as set forth, solely by reason of the carelessness, negligence, and unskillfulness of the Defendants, and each of them, without negligence or carelessness on their parts contributing thereto.

35. That due to the Defendants' negligent conduct, the Decedent, ROSANNA GUERRERO, has been damaged in the sum of TWENTY MILLION ($20,000,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION

36. Plaintiffs, **LUIS TORIBIO, As Administrator of the Estate of ROSANNA GUERRERO, and LUIS TORIBIO, Individually**, repeat and reallege each and every allegation contained in Paragraphs numbered **"1"** through **"35"**, inclusive, of this Verified Complaint, with the same force and effect as if set forth herein at length.

37. That the Plaintiff, LUIS TORIBIO, at all times hereinafter mentioned, was the spouse of the Decedent, ROSANNA GUERRERO.

38. That as a result of the aforementioned injuries sustained by the Decedent, ROSANNA GUERRERO, the Plaintiff, LUIS TORIBIO, has been caused to lose the comfort, society, companionship, and consortium of his spouse.

39. That due to the Defendants' negligence, the Plaintiff, LUIS TORIBIO, has been damaged in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION

40. Plaintiffs, **LUIS TORIBIO, As Administrator of the Estate of ROSANNA GUERRERO, and LUIS TORIBIO, Individually**, repeat and reallege each and every allegation contained in Paragraphs numbered **"1"** through **"39"**, inclusive, of this Verified Complaint, with the same force and effect as if set forth herein at length.

41. By reason of the foregoing, **ROSANNA GUERRERO** sustained severe bodily injury resulting in wrongful death.

42. As a result of the foregoing, **ROSANNA GUERRERO** left surviving next of kin and distributees.

43. As a result of the foregoing, **ROSANNA GUERRERO**'s surviving next of kin and distributees became liable for and expended money for funeral and other expenses.

44. As a result of the foregoing, **ROSANNA GUERRERO**'s surviving next of kin and distributees suffered pecuniary damages.

45. As a result of the foregoing, **ROSANNA GUERRERO**'s estate sustained all other damages allowed by law.

46. That due to the Defendants' negligence, **ROSANNA GUERRERO**'s next of kin and distributees have been damaged in the sum of TWENTY MILLION ($20,000,000.00) DOLLARS.

WHEREFORE, the Plaintiffs, **LUIS TORIBIO, As Administrator of the Estate of ROSANNA GUERRERO, and LUIS TORIBIO, Individually,** demand judgment against the Defendants on the FIRST CAUSE OF ACTION in the sum of TWENTY MILLION ($20,000,000.00) DOLLARS, on the SECOND CAUSE OF ACTION in the sum of TWENTY MILLION ($20,000,000.00) DOLLARS, on the THIRD CAUSE OF ACTION in the sum of

FIVE MILLION ($5,000,000.00) DOLLARS and on the FOURTH CAUSE OF ACTION in the sum of TWENTY MILLION ($20,000,000.00) DOLLARS, together with costs, interest and disbursements of this action, and for such other and further relief that this Court deems just and proper.

Dated: New York, New York
April 25, 2017

JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.
Attorneys for Plaintiffs

By: ______________________
CHRISTINA CTORIDES (CC 5271)
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SOUTHERN DISTRICT OF NEW YORK
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Defendants.
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JURY DEMAND

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PLEASE TAKE NOTICE that the Plaintiffs demand a trial by jury on all the issues herein.

Dated: New York, New York
April 25th, 2017

JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.
Attorneys for Plaintiffs

By: ______________________________
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SOUTHERN DISTRICT OF NEW YORK

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Plaintiffs,

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Defendants.

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CERTIFICATE OF MERIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CHRISTINA CTORIDES, a member of the law firm of **JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.** hereby affirms the truth of the following:

That pursuant to the Rules of Civil Procedure §3012(a), the deponent states that she has conferred with a physician who is a specialist in the field in which the Defendants practice medicine and has been advised that sufficient basis exist for the commencement of this medical malpractice suit.

CHRISTINA CTORIDES

Sworn to before me this
25th day of April, 2017

Notary Public

JESSICA L SIMON
Notary Public, State of New York
Registration #01SI6294499
Qualified In New York County
Commission Expires Dec. 23, 2017